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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/228,109	01/11/1999	MARTIN BRADY	0166	7301

7590 06/18/2003
ROGER S DYBVIG
22 GREEN STREET
DAYTON, OH 45402

EXAMINER

SHOAP, ALLAN N

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8C

Office Action Summary

Application No.

09/228,109

Applicant(s)

BRADY, MARTIN

Examiner

Allan N. Shoap

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3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,5,8,9,14 and 15 is/are allowed.
- 6) ☒ Claim(s) 3,7, and 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The Office action mailed 2/4/03 (Paper No. 19) is to be considered herein repeated and made Final.

Applicant's arguments filed 5/5/03 have been fully considered but they are not persuasive. Applicant argues that there is no suggestion to mount the scissors and its sheath holder to a can opener and argues this is what the Board had stated in its original decision. The Board, however, did not have before it Davies and Nielsen et al. Davies states that it would have been obvious to provide a scissors and sheath holder to any surface deemed convenient as noted in Paper No. 19. Moreover, Nielsen et al suggests securing a scissors via its holder to a home appliance as also noted in Paper No. 19. True, neither reference refers to a can opener but in combination the references are suggestive to provide a holder and scissors to any surface deemed convenient. The examiner asserts this could be a bathroom cabinet wall, a gun cabinet, the exterior of a tank bowl or its reservoir tank, a telephone, a saw horse, a drill, a chair, a table, a couch, a living room wall, a sliding door or any other door, a television, a window, a vacuum cleaner, a dog cage, a car fender, a drawer, a lamp, a computer, a bath tub, a tool box, a file cabinet, an Army tank, a summer fan, an astronaut's quarters in outer space, a bulletin board, a coat rack, a bed, etc., etc. As long as the scissors does not get in the way of the operation of the appliance or create a danger such a fire hazard on a wall surface, it is submitted that one can place a scissors and holder, literally, anywhere. Otherwise, it would appear that applicant is stating the claimed scissors and sheath holder would be patentable to someone else if this other individual came up with a surface to attach them to that applicant had not previously suggested.

It is clear from Nielsen et al that various home appliances may have a scissors attached such as sewing machine, refrigerator, a washer, a dryer. The patent to Nielsen et al uses the term "machine" broadly since it then suggests a sewing machine as an example. It is submitted that since a can opener is a machine, if a consumer has a reason to provide a scissors near it, then it would have been obvious to provide the scissors on it as well as one of any available surfaces where the scissors could be placed and made accessible. Nevertheless, even if a can opener is not considered a machine – and it is not understood why it would not be – it would have been obvious to place a holder and sheath on it if it was determined to be an available surface where accessibility of a scissors could be quickly made.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Shoap whose telephone number is 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.


ALLAN N. SHOAP
SUPERVISORY PATENT EXAMINER
ART UNIT 3727
703-308-1082

June 16, 2003